

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

GARY ROCKWELL,)	Case No.: 5:06 CV 391
)	
Petitioner)	JUDGE SOLOMON OLIVER, JR.
)	
v.)	
)	
STEWART HUDSON, WARDEN,)	
)	
Respondent)	<u>ORDER</u>

On February 21, 2006, Petitioner Gary Rockwell (“Rockwell” or “Petitioner”) filed a petition for writ of habeas corpus (“Petition,” ECF No. 1) pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his state court conviction for five counts of attempted aggravated murder, one count of aggravated burglary, and one count of aggravated arson. (*See* Petition at 2.) Rockwell alleges that his rights “to Due Process and Equal Protection of law were violated by improper sentencing by the trial court” because “the trial court did not make the required findings before imposing consecutive sentences/non-minimum sentences on the [P]etitioner.” (*See id.*) This court referred the case to Magistrate Judge Kenneth S. McHargh for preparation of a Report and Recommendation. On June 23, 2006, Respondent Stewart Hudson (“Respondent”) filed a Motion to Dismiss the Petition for failure to raise any cognizable claim and because Petitioner’s claim was procedurally defaulted. (*See* Mot. to Dismiss, ECF No. 12.)

The Magistrate Judge submitted his Report and Recommendation on March 21, 2007, recommending that Rockwell's Petition for Habeas Corpus under 28 U.S.C. § 2254 be denied and dismissed. (ECF No.14.) Specifically, the Magistrate Judge found that: (1) Petitioner's claim was procedurally defaulted; (2) even if it were not procedurally defaulted, habeas relief would not be available to Petitioner on the grounds that he raised; and (3) although it was not clear from the Petition whether Petitioner intended to raise a Sixth Amendment *Blakely* claim, the state court decision was not contrary to *Apprendi* or *Blakely* and, thus, Petitioner had not established that his sentence was contrary to clearly established federal law. (*See* R&R, ECF No. 14.)

On February 7, 2007, Rockwell requested a thirty-day extension of time, until March 9, 2007, to file objections to the Report and Recommendation. (*See* Request for Extension, ECF No. 15.) On February 9, 2007, the court granted Petitioner's request. As of the date of this Order, Plaintiff has not filed objections to the Report and Recommendation. By failing to do so, he has waived the right to appeal the Magistrate Judge's recommendation. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).

The court finds, after careful review of the Magistrate Judge's Report and Recommendation and all other relevant documents, that the Magistrate Judge's conclusions are fully supported by the record and controlling case law. Accordingly, the court adopts as its own the Magistrate Judge's Report and Recommendation. (ECF No. 14.)

Consequently, Respondent's Motion to Dismiss Petitioner's Writ of Habeas Corpus is granted. (ECF No. 12.) Rockwell's Petition is hereby denied, and final judgment is entered in favor of the Respondent. The court further certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal

from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

/s/SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

March 20, 2007